



October 6, 2010

Legislative Council Study Committee on Review of Tax Incremental Financing
Senator Rick Gudex, Chairperson
Representative, Amy Loudenbeck, Vice Chairperson

RE: City of Milwaukee Letter of 9/18/2014

Dear Senator Gudex and Representative Loudenbeck,

I wanted to provide a formal response to the above referenced letter from Kimberly Montgomery, Senior Fiscal Legislative Manager for the City of Milwaukee.

As noted in her letter, I did have an opportunity to meet with her and other members of the City staff that focus on TIF on behalf of the City. The meeting was very instructive and helpful and I appreciated their reaching out to discuss the recommendations that I had offered to the Study Committee.

Because I will be unable to attend the upcoming meeting of the committee on October 9, I wanted to provide my thoughts on the points covered in their letter.

Overall, with the exception of the two points I will cover below, I concur with the thoughts and recommendations of the City as expressed in their letter of 9/18 and would encourage the Study Committee to positively consider including those proposed modifications within the recommendations for legislative change.

Our specific points of concurrence include:

1.) Vacant Land Test:

With their proposed addition of the parking lot exemption as discussed in the city's second sub bullet point on page 1 of their letter of 9/18/14, and the clarification the City provided on the ability to use the replacement cost value vs. existing value as discussed in their first sub bullet point on page 1 of their referenced letter, we concur with their position.

2.) Elimination of requirement for a base value to be assigned to municipally owned property proposed for redevelopment.

This is the City's second bullet point on page 2 of their letter. We strongly concur with the recommendation to eliminate Sec. 66.1105 (4)(k) for the reasons that they set forth.

3.) Clarify Statute to allow use of Redevelopment Authority Revenue Bonds.

While we believe that the statutes already provide for this as all of the major Wisconsin bond attorneys have issued legal opinions for the use of Community Development Authority Revenue Bonds, we are open to the idea of clarification if that is deemed necessary provided that it does not inhibit any practices already well-established in the State.

Based upon our experience with communities that have worked with the existing law, the following points are the two that we differ on with the City:

1.) Provision of Flexibility on Industrial Zoning in Mixed Use TIDs:

Regarding the final bullet point in my submittal to the Committee dated 8/4/14 and updated 8/11/14 which relates to the second main bullet point at the bottom of page 2 in the City's letter of 9/18/14, the City states that the intent of the 2004 legislation with this provision was to prevent the mixed use TID from becoming a vehicle for creating TIDs in greenfield areas. Without further research into the legislative intent, and accepting the City's point as a premise, we still believe that the way the current language is written it is too restrictive in practice. We are advocating for some flexibility. If the legislature wishes to retain the original balance of land use between the originally designated industrial use vs. either of the other uses (commercial or residential), it could do so by requiring the same ratio to be maintained rather than requiring that the specific land originally zoned industrial be maintained as industrial--- this would allow a community the flexibility of replacing a portion of land currently zoned industrial with land that is currently zoned either commercial or residential if the situation presented itself that a piece of land originally zoned industrial were needed to enable a project to proceed for one of the other allowed purposes.

2.) Requiring submission of estimated rate of return on equity to Joint Review Board.

This is the final bullet point on page 2 of the City's letter of 9/18/14. While we support the idea of reviewing developer profitability when TID dollars are provided as a cash grant, we disagree with the idea of making it a statutory requirement and for the submittal to the Joint Review Board (JRB) as part of all of the up front submittals for four important reasons.

- A. Providing this as a statutory requirement to the JRB presumes that they would have the opportunity to consider this as part of their approval of the TID. We do not believe that this is a role that should be played by the JRB as it would effectively mean that a developer would need to negotiate a development agreement that each of the overlapping taxing jurisdictions would find satisfactory, and it would significantly dilute the control over local development or redevelopment by the elected board of the City, Village or Town—not to mention the fact that no developer would likely find it realistic to undertake a deal with that added to the process.

- B. There are various measures of profitability, cash on cash, cash on cost and internal rate of return, it may be appropriate to consider different measures depending upon whether the developer is building to sell or building to hold. There are also different levels of profit or return that are appropriate depending upon the nature of the risk of the project. It is not wise to use a legislative “cookie cutter” approach to evaluating the appropriateness of the return.
- C. The current statute already requires that a development agreement be executed with a developer whenever there is a cash grant involved. The rate of return is typically spelled out in the agreement when the community uses that as one of its standards for approval. In the event that the JRB board has not disbanded at the time an agreement is approved, Section 66.1105(2)(f) requires that this agreement also be provided to them as a matter of information. (I note that one of the recommendations before the Committee calls for the elimination of the option of disbanding and would provide that the JRB continue until the district is terminated. I would support that recommendation.)
- D. Finally, we are strong advocates of having communities confirm the “but for” test with the review of a developer’s proforma to verify the need and level of participation required and this typically means looking at the return on investment , however there are instances in smaller communities and for small levels of participation where there may not have been any economic activity occurring where the cost of an independent developer proforma review would be unjustified. Making this a statutory requirement would be onerous in such a situation.

There are many occasions that the TID may be created prior to the execution of a development agreement—particularly if it is a multi-phased development plan. If this would require the development agreements to be done prior to the TID JRB approval, we could lose many deals in Wisconsin simply because of the 90 days that it takes to create a TID and it would likely result in mostly single project TIDs which would greatly limit the success of districts where a larger project that may not need as much TID support can provide the TID revenue to enable another project to proceed within that district that would otherwise not do so—or to provide for significant infrastructure that could not be similarly supported by a smaller project.

As a suggestion, rather than require this in legislation, why not require the Department of Revenue to work with market participants (municipal officials, advisors and developers) to update a list of TID “best practices” that could be offered as guidance for municipalities, and JRB’s ? This could include the recommendation that communities require developer proforma reviews to evaluate the returns and that this be included in the agreement.

Again, thanks to the City for their thoughtful suggestions and I look forward to further discussion with fellow Committee members.

Very Truly Yours

A handwritten signature in black ink, appearing to read "Michael C. Harrigan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael C. Harrigan, CIPFA
Chairman / Sr. Financial Advisor

CC: Kimberly Montgomery, City of Milwaukee